



New version of shoreline guideline rules ready for public comment

The Department of Ecology (Ecology) is seeking public comment on draft shoreline management rules. These rules provide direction and guidance to more than 245 cities and counties who use the guidelines and the Shoreline Management Act to update and implement their shoreline master programs. These local "master programs" are the rules and plans that regulate development and use of shorelines along rivers and larger streams, along lakes over 20 acres, and along marine waterfronts. Four public hearings are scheduled at locations across the state in August (see back page). The public comment period closes September 15, 2003.

Introduction

Ecology has been working since 1995 to satisfy a legislative requirement to update the shoreline guideline rules. This effort has included a 1999 draft that was withdrawn after comments showed that substantial changes were needed. Ecology formally adopted a rule in November 2000, which included a default "Path A" and an optional "Path B" for local governments. The 2000 rule was appealed to the Shoreline Hearings Board (and later in Superior Court). The board determined that the adopted rule violated or exceeded applicable law.

At the end of 2001, Governor Locke and Attorney General Gregoire convened mediation aimed at ending the litigation and developing a set of shoreline guidelines that would be acceptable to the diverse interests. The mediation effort lasted most of a year and culminated in a unique and important consensus around a new set of guidelines, which Ecology is now proposing for public comment and adoption. The proposal has been endorsed by a broad coalition of diverse interests, ranging from the Association of Washington Business (representing a coalition of business organizations, cities and counties), the Washington Aggregates & Concrete Association, the Washington Environmental Council and dozens of other environmental groups concerned about shoreline issues.

In addition to supporting this new set of shoreline guidelines, the group also supported legislation adopted by the 2003 Legislature that replaces a two-year update schedule for local governments with a phased-in schedule - from 2005 to 2014. In addition, the Legislature provided \$2 million in the 2003-05 budget to pay for shoreline review and planning by the first group of cities and counties.

Key changes

The draft rules begin with a significantly expanded statement of general policy goals for shoreline management, followed by a new set of 11 governing principles. The negotiations group used these principles as benchmarks in redrafting the rules. The guiding principles are intended to establish a foundation for consistent interpretation in the future. Based on these principles, the following general changes were made to the earlier version of the rule.

Property rights

The proposed guidelines include a more-explicit acknowledgment of legal limitations on the regulatory authority of state and local government with respect to private property. Earlier drafts drew fire from property owners who believed the requirements might create unconstitutional "takings" of property without compensation.



Ecology's proposed shoreline guidelines require local governments to inventory shorelines and establish measures to ensure no net loss of ecological functions.

Shoreline characterization

As with prior versions of the rules, local jurisdictions are required to inventory and analyze all relevant available information to characterize their shorelines, including an analysis of ecological functions. The newly proposed rule provides greater clarity by setting "no net loss of shoreline ecological functions" as an environmental protection standard for local master programs to achieve. This is used in combination with guidance on several aspects of shoreline planning in place of prescriptive standards, such as fixed buffer widths.

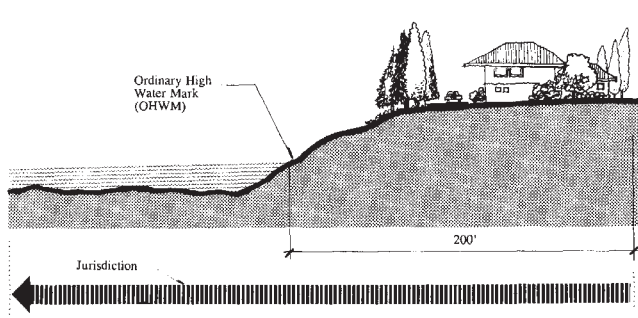
The analysis of the ecological functions of local shorelines will provide the foundation for local shoreline policies and regulations. For example, an analysis may determine where the vegetation is essential to cleaning and filtering stormwater runoff to prevent downstream pollution. The jurisdiction would then use set-back requirements, restrictions, or wetlands protection measures to prevent inappropriate development in those areas.

Restoration plans

The proposed rule requires that restoration of degraded ecological functions be accomplished through comprehensive planning. Previous iterations of the rule had raised concerns that regulations might unreasonably require new developments not only to avoid harming the shoreline, but to restore shoreline damaged by prior generations. This should avoid imposing unfair burdens of restoration on private development. Instead, each local government will be asked to consider restoration needs in that jurisdiction, identify resources that may be available to conduct restoration, prioritize restoration actions, and coordinate development activities to make sure they don't interfere with planned restoration efforts and vice versa.

The approach to restoration planning may vary among jurisdictions, depending on the size of the jurisdiction; the extent and condition of shorelines in the jurisdiction; the availability of grants, volunteer programs or other tools for restoration; and the nature of the ecological functions to be addressed by restoration planning.

Where does the Shoreline Management Act apply?



The Shoreline Act applies to more than 20,000 miles of shorelines. This includes 2,300 miles of lake shores, 16,000 miles of streams, and 2,400 miles of marine shores. Shorelines are defined as:

- all marine waters;
- atreams with a mean annual flow graeter than 20 cubic feet per second;
- lakes 20 acres or larger;

- upland areas called "shorelands" 200 feet landward from the edge of these waters;

and the following areas when they are associated with one of the above;

- wetlands and river deltas; and
- some or all of the 100 year floodplain including all wetlands within the entire floodplain.

Cumulative effects

The proposed rule clarifies requirements for assessing cumulative effects on shoreline ecological functions that would result from future shoreline development that are reasonably foreseeable based on proposed master programs.

For example, local governments would evaluate the effects of regulations that address platting or subdividing of property, laying of utilities, and mapping of streets that establish a pattern for future development.

Endangered species

Federal agencies will make their own assessments of whether the guidelines, or local master programs prepared under them, satisfy ESA requirements. Ecology believes the proposed guidelines reflect sound science and, as they are implemented to protect and restore shoreline resources, fish habitat will be protected and improved over time.

Connection to growth management

A state law passed in 1995 mandated that local shoreline programs be considered part of local growth management plans and regulations. The proposed rule describes approaches to integrating shoreline programs with other local comprehensive plans and development regulations. It also acknowledges that it is local governments' obligation to assure consistency, and that Ecology's review is limited to the master program's consistency with the Shoreline Management Act, not the Growth Management Act.

Time and money

In previous rounds of public comment, local governments expressed concern that updating local master programs to be consistent with the new state rule should be funded by the state and would take more than the two years specified in statute.

The 2003 legislature amended the required adoption schedule for updating shoreline master programs. The schedule specifies a number of "early adopters" with deadlines in 2005 and 2009, and links master-program updates for remaining jurisdictions with the Growth Management Act compliance cycle beginning in 2011 and ending in 2014. The 2003-05 state budget includes \$2 million to help the "early adopters" update their local shoreline master programs, and it is expected that additional money will be made available in future bienniums so other local governments may update theirs as well.

Public comments

The public-comment period on the draft rule and associated analysis documents (see box on next page) begins July 16 and closes Sept. 15. The rule is posted on Ecology's Web site at <http://www.ecy.wa.gov/programs/sea/SMA/guidelines>. To obtain a printed copy of the rule, call 888-211-3641.

Comments on the rule should be sent to:

**Shoreline Guidelines,
Department of Ecology,
PO Box 47600,
Olympia, WA 98504.**

Other rule requirements

Protecting shoreline vegetation

The draft rule requires that local plans protect shoreline plants that keep banks from eroding, shade the water, and create habitat for fish. Master programs developed under the new rules will include clearing and grading standards or setback and buffer standards to protect vegetation.

Agricultural lands

The current proposed rule was completely revised from previous drafts to reflect laws adopted in 2002 on applicability to agriculture. Where agriculture activities exist today, shoreline master programs may not significantly limit changes in agricultural use. New agricultural uses would be subject to requirements of the master programs, but this requirement would not apply to changes from one crop to another. Agricultural interests represented in the negotiations have agreed with this approach.

Bulkheads

Under the proposed rules, local master programs would need to take stricter measures to slow the spread of bulkheads and other "hard" shoreline armoring. Scientists have found that these structures degrade fish and wildlife habitat and can accelerate erosion on neighboring properties.

The draft rule would require that applicants demonstrate a need for new bulkheads and other shoreline armoring before getting approval. The rule also

would require that fish-friendly erosion-control methods be used as a first priority.

The new draft clarifies that repairing and maintaining existing bulkheads is allowed. However, the draft sets requirements for replacing bulkheads.

Docks and piers

The draft rule requires that docks and piers be built to reduce harm to the shoreline environment. Also, piers and docks must be restricted to the minimum size needed for the proposed use, and property owners are encouraged to share piers and docks among several neighbors to reduce the spread of individual structures.

Environment designations

The proposed rules give local governments new directions for setting environment designations. These designations are similar to zoning overlays for shoreline areas. Designations such as "natural," "rural-conservancy," or "high-intensity" are applied to shorelines based on land-use patterns and the character of the natural resources. Each designation has its own management policies and regulations.

Other documents available for review

Throughout the comment period, Ecology is seeking public comments on a number of draft analysis documents related to the rule:

- *A Supplemental Draft Environmental Impact Statement (SDEIS) that describes the likely environmental effects of the rule on a statewide scale;*
- *A Small Business Economic Impact Statement (SBEIS) that evaluates whether the costs for businesses that might result from the draft rule impose disproportionate costs on small business; and*
- *An Evaluation of Probable Benefits and Costs and Least Burdensome Analysis.*

Hearing Schedule: Public hearings on proposed amendments to Washington's shoreline master program guidelines rule are scheduled for August. Each meeting will begin with an informal **open house** discussion at 5:30 p.m. Formal **hearings** with opportunity to submit testimony start at 7 p.m.

Seattle, August 5, 2003

Seattle Center Northwest Rooms
(Shaw Room), 305 Harrison St.

Directions: From I-5, take Mercer Street/Seattle Center exit. Follow signs to Seattle Center, look for parking garages close to the Center.

Longview, August 6, 2003

Location: Public Utility District of Cowlitz
County (Auditorium) 961, 12th Avenue

Directions: From I-5, take Longview Industrial Area exit onto Tennant Way. Go right on 12th, go 3 blocks.

Spokane, August 12

Location: WA State University - Phase I
Classroom, 668 North River Point

Directions: Exit I-90 East/West at Division Street - take Division north. Turn right on Trent Ave. Turn left on Riverpoint Boulevard. The first building on the right is the Health Sciences Building; the second building is the Phase I building. There are multiple entrances to the parking lots off of Riverpoint Blvd.

Wenatchee, August 13

Location: Chelan County Public Utility
District No 1, 327 N. Wenatchee Avenue

Directions: From the West: take Highway 2 to state Route 285 south into Wenatchee to 5th St (stay in left lane), the PUD will be on your left. From the East: at the junction of Highway 2 and state Route 28 take a right and continue on Hwy 2 West and Hwy 97 South. After crossing the Columbia R. on the Odabashion Bridge take state Route 285 south into Wenatchee, to 5th St., (stay in left lane), the PUD will be on your left.

For more information about public hearings, call 888-211-3641 or visit Ecology's Web site at www.ecy.wa.gov/programs/sea/SMA/guidelines. All facilities are handicapped-accessible. For questions about accommodations contact Debi Irwin at (360) 407-7291, or 360-407-6000 TTY (for the speech or hearing impaired), 711 or 800-833-6388



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